

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

COPY

In the Matter of the Arbitration Between

Name of Claimant

Ann Murphy, Personal Representative of the
Estate of Virginia Taylor, Deceased

and

91-02201

Name of Respondents

A.G. Edwards & Sons, Inc.
John Gillen
Randall Kiessel
James Griffin

REPRESENTATION OF PARTIES

Ann Murphy, Personal Representative of the Estate of Virginia Taylor, Deceased ("Claimant") was represented by Alfred J. Gemrich, Esq. of Gemrich, Moser, Bowser, Fette & Lohrmann, Kalamazoo, Michigan.

A.G. Edwards & Sons, Inc., John Gillen, and Randall Kiessel (collectively as "Respondents") were represented by Phyllis A. Hartrich, Esq. of A.G. Edwards & Sons, Inc., St. Louis, Missouri.

James Griffin did not appear at the hearing of this matter.

CASE INFORMATION

The Statement of Claim was filed on or about July 18, 1991. Submission Agreement of Claimant was signed on July 12, 1991. Claimant's Objections to Respondents' Motion to Dismiss for Lack of Jurisdiction over the Subject Matter, Failure to State a Claim Upon Which Relief can be Granted and Motion for More Definite Statement was filed on or about October 15, 1991.

Statement of Answer, Counterclaim and Third Party Claim was filed on behalf of Respondents A.G. Edwards & Sons, Inc., John Gillen, and Randall Kiessel on or about December 5, 1991. Submission Agreement of Respondent A.G. Edwards & Sons was signed on December 4, 1991 by Steven G. Sneeringer, Esq. Submission Agreement of Respondent John Gillen was signed on August 15, 1991. Submission Agreement of Respondent Randall Kiessel was signed on

August 28, 1991. Motion to Dismiss for Lack of Jurisdiction over the Subject Matter, Failure to State a Claim Upon Which Relief can be Granted and Motion for More Definite Statement was undated.

James Griffin did not file any responsive pleadings in this matter.

HEARING INFORMATION

A pre-hearing conference was held on January 14, 1994 for one (1) session with Norman Bristol, Esq., presiding.

The hearing was held on January 26, 1994 for two (2) sessions, January 27, 1994 for two (2) sessions and January 28, 1994 for two (2) sessions in Traverse City, Michigan and June 7, 1994 for two (2) sessions, June 8, 1994 for two (2) sessions and June 9, 1994 for two (2) sessions in Kalamazoo, Michigan for a total of 12 hearing and 1 prehearing sessions.

CASE SUMMARY

Claimant alleged that Respondents engaged in churning of the account of the decedent; made unsuitable recommendations; improperly supervised the account executive; and violated various securities laws. Specifically, Claimant alleged that Respondents owed one or more of the following duties to the decedent: duty to deal fairly and not to violate §§ 10 (b), 15(c)(1), 17(a) of the Securities Act of 1933 and Rules 15c1 7(a), 15c1 2, 10(b)(5) promulgated under the Securities and Exchange Act of 1934; and to comply with the various statutory and regulatory requirements as established under the common law. Claimant also alleged that Respondents breached their fiduciary duty to them and failed to properly supervise the broker.

Respondents A.G. Edwards & Sons, Inc., John Gillen, and Randall Kiessel denied the allegations set forth in the Statement of Claim. Respondents specifically denied that the decedent's investment and financial experience was minimal, unsophisticated and meager and denied that Respondent Griffin "played to Taylor's weakness and vulnerability" or otherwise exercised control over her or the investment decisions in the account. Respondents also stated that the decedent entered into approximately twenty six unsolicited transactions in her account. Various affirmative defenses were also asserted by Respondents.

In their Third Party Claim against Respondent James Griffin, Respondents alleged that Griffin had executed an Investment Broker Agreement which provided in part that Griffin would indemnify A.G. Edwards & Sons, Inc. for any losses suffered as a result of his failure to abide by the rules and regulations of the firm, the NASD, NYSE, and federal and state securities laws.

RELIEF REQUESTED

Claimant requested an award as follows:

- * the sum of \$54,637 which represents trading losses in the account;
- * the sum of \$38,372 which represents the estimated commissions and other charges paid with regard to the account and transaction in the account;
- * the sum of \$16,695 which represents margin interest paid with regard to the account;
- * the sum of \$148,343 which represents the estimated Standard & Poor's value of the portfolio (\$194,118) less the sum of \$45,775 which was the value of the portfolio at the time of death of Virginia Taylor;
- * interest at the legal rate on all sums stated above;
- * accounting, expert witness, investigative charges, attorney's fees, arbitration fees and other similar expenses and charges incurred or to be incurred in this proceeding; and
- * exemplary or punitive damages in no less than treble the amount of the total of all actual damages or such other amount as the arbitrators deem just and proper in the amount of \$774,141.

Respondents requested that the claims asserted against them be dismissed and denied in their entirety. Respondents requested that in the event that they were held liable for any of the claims asserted herein that they be awarded any sums payable to the Claimant pursuant to the award of this panel from Third Party Respondent James Griffin.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file, the panel has determined that Respondent James Griffin has been properly served with the Statement of Claim pursuant to §13 and §25 of the N.A.S.D. Code of Arbitration Procedure (the "Code"). The panel also determined that Respondent James Griffin had received due notice of the hearing as required under §26 of the Code and that arbitration of the matter would proceed pursuant to §29 of the Code.

Respondent James Griffin did not file with the N.A.S.D. a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the N.A.S.D. Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the N.A.S.D.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to the agreement between the parties other than James Griffin, the claims asserted by the Claimant Ann Murphy, Personal Representative of the Estate of Virginia Taylor, Deceased against Respondent A.G. Edwards & Sons, Inc., John Gillen, and Randall Kiessel shall be satisfied and discharged upon payment by A.G. Edwards & Sons, Inc. of the sum of \$152,695.18, with interest thereon at the Michigan legal rate from June 9, 1994.
2. Third Party Respondent James Griffin shall be and hereby is liable for and shall pay to Third Party Claimant A.G. Edwards & Sons, Inc. the sum of **One hundred twenty three thousand two hundred ninety six dollars and seventy nine cents (\$123,296.79)**.
3. Third Party Respondent James Griffin shall be and hereby is liable for and shall pay to Third Party Claimant A.G. Edwards & Sons, Inc. the sum of **Twelve thousand three hundred dollars (\$12,300)** as reimbursement of forum fees paid to the NASD by A.G. Edwards & Sons, Inc.
4. Interest at the Michigan legal rate is awarded on the sums stated in paragraphs 2 above from and inclusive of June 9, 1994 and on the sum stated in paragraph 3 above from the date of payment of said sum by A.G. Edwards & Sons, Inc. as forum fees to and inclusive of the date such sums are paid.
5. Third Party Respondent James Griffin shall be and hereby is liable for and shall pay to Third Party Claimant A.G. Edwards & Sons, Inc. the actual attorneys fees incurred in this matter to the extent that such fees and expenses do not exceed **Thirty five thousand dollars (\$35,000)**.

The undersigned arbitrators find that the Claimant did not participate in the claim against James Griffin. The panel has determined that the claim of A.G. Edwards & Sons, Inc. against James Griffin is not subject to the Order of the Grand Traverse County Circuit Court dated January 25, 1994 in Murphy v Griffin Case Number 92-09935-CH.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each prehearing conference, if any. There were 12 sessions x \$1,000 = \$12,000 and 1 prehearing conference session x \$300 = \$300 + \$12,000 = \$12,300 in forum fees. Pursuant to §43(b) a hearing

session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$250 and shall refund hearing session deposit in the amount of \$1,000 previously deposited with the N.A.S.D. by the Claimant and Respondent A.G. Edwards & Sons, Inc. shall pay to the N.A.S.D. the non-refundable filing fee in the amount of \$500. Respondent A.G. Edwards & Sons, Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$12,300 as the balance due for forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

s/ Norman Bristol, Esq.

Norman Bristol, Esq.

Public Arbitrator, Presiding Chair

July 14, 1994

s/ R. Edward Lawton

R. Edward Lawton

Public Arbitrator

July 28, 1994

s/ John R. Main

John R. Main

Industry Arbitrator

July 15, 1994

Dated: 8-4-94